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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

REGINALD RENEE CUMMINGS,

Defendant and Appellant.

E061600

(Super.Ct.No. FSB024959)

OPINION

APPEAL from the Superior Court of San Bernardino County. Michael A. Smith, Judge. (Retired judge of the San Bernardino Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Mark D. Johnson, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Reginald Renee Cummings appeals after the trial court denied his petition for resentencing under Penal Code section 1170.126, known as the

Three Strikes Reform Act of 2012 (Prop. 36, as approved by voters, Gen. Elec. (Nov. 6, 2012)).¹ Defendant filed notice of appeal on February 21, 2014.² We affirm.

PROCEDURAL BACKGROUND

A jury convicted defendant of one count of inflicting corporal injury on a cohabitant. (§ 273.5, subd. (a), count 1). Following a bifurcated trial on defendant's priors, the trial court found that he had served two prior prison terms (§ 667.5, subd. (a)) and had two prior strike convictions (§§ 1170.12, subds. (a)-(d) & 667, subds. (b)-(i)). The prior strike convictions were for robbery in Los Angeles and murder in Illinois. Defendant brought motions to reduce the charge on count 1 to a misdemeanor, pursuant to section 17, subdivision (b), and to strike a prior strike conviction pursuant to *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497. On May 16, 2000, the court denied both motions. It then sentenced defendant to state prison for 25 years to life, plus one year on each of the prison priors, for a total of 27 years to life.

¹ All further statutory references will be to the Penal Code, unless otherwise noted.

² We note that the appealability of the denial of a section 1170.126 petition is currently being considered by the Supreme Court. (See, e.g., *Teal v. Superior Court* (2013) 217 Cal.App.4th 308, review granted July 31, 2013, S211708 [court held it was not appealable]; *People v. Hurtado* (2013) 216 Cal.App.4th 941, review granted July 31, 2013, S212017 [court held it was appealable].) Even if we were to conclude it was a nonappealable order, we could, in the interest of judicial economy and because of uncertainty in the law, treat defendant's appeal as a petition for writ of habeas corpus or petition for writ of mandate. (See *People v. Segura* (2008) 44 Cal.4th 921, 928, fn. 4 [treating appeal from nonappealable order as petition for writ of habeas corpus]; *Drum v. Superior Court* (2006) 139 Cal.App.4th 845, 852-853 [Fourth Dist., Div. Two] [treating appeal as petition for writ of mandate due to uncertainty in the law].) In any event, we will review defendant's appeal.

On March 29, 2013, defendant filed a petition for resentencing under section 1170.126. The court denied the petition since defendant had a prior strike conviction for the crime of murder in Illinois, which made him ineligible for resentencing. (§ 1170.126, subd. (e)(3); *People v. Avery* (2002) 27 Cal.4th 49, 53.)

On May 8, 2013, defendant filed a motion for consideration. The court denied the motion.

On February 21, 2014, defendant filed a notice of appeal. Defendant also filed a petition for writ of habeas corpus on July 1, 2014, to allow him to file a late notice of appeal and deem it constructively filed within the 60-day time period. On July 29, 2014, this court granted the petition and directed the superior court clerk to consider the notice of appeal received on February 21, 2014, to be timely filed. (*In re Reginald Cummings*, case No. E061431.)

ANALYSIS

This court appointed counsel to represent defendant on appeal. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the case, a brief statement of the facts, and identifying one potential arguable issue: whether the court properly determined that defendant's Illinois murder conviction rendered him ineligible for resentencing.

Defendant was offered an opportunity to file a personal supplemental brief, which he has not done. Under *People v. Kelly* (2006) 40 Cal.4th 106, we have conducted an independent review of the record and find no arguable issues.

DISPOSITION

The judgment is affirmed.

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HOLLENHORST
Acting P. J.

We concur:

RICHLI
J.

CODRINGTON
J.